

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

CHAPTER 12

EDWARD L. GILBERT  
JANE M. GILBERT

Debtors.

BK No. 09-10263

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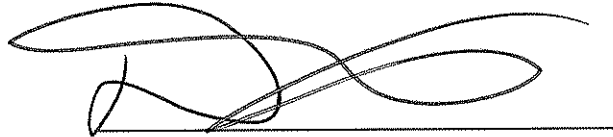
**NOTICE OF MOTION FOR ORDER AUTHORIZING  
SALE OF REAL PROPERTY, 20.3 ACRE PARCEL,  
SAND HILL AND LAKE ROADS, TOWNS OF RUSHFORD  
AND CANADEA, COUNTY OF ALLEGANY, AND  
STATE OF NEW YORK, FREE AND CLEAR OF LIENS**

PLEASE TAKE NOTICE, that the debtors herein, Edward L. and Jane M. Gilbert (“Debtors”), by their undersigned attorneys, will move this Court before the Hon. Carl L. Bucki, at the United States Courthouse, Western District of New York, Olympic Towers, 3<sup>rd</sup> Floor, 300 Pearl Street, Buffalo, New York, on the 4<sup>th</sup> day of February, 2013, at 10:00 o’clock in the forenoon on that day, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. §§363(b) and (f), and 1206, authorizing the Debtors to sell free and clear of liens, for a purchase price of \$40,000, the following real property, to wit: 20.3 acre parcel of vacant land, being part of Tax Map parcels 64.-3-18 and 64.-1-8.31, located on Sand Hill and Lake Roads, in the Town of Rushford, County of Allegany, and State of New York; further authorizing payment from the proceeds of sale of reasonable and necessary costs of sale, including recording costs and attorneys fees; and granting such other and further relief as the Court deems just, proper and equitable.

PLEASE TAKE FURTHER NOTICE, that answering and opposing papers, if any, shall be filed with the Clerk, United States Bankruptcy Court, Olympic Towers, Suite 250, 300 Pearl Street, Buffalo, New York 14202-2501, and served upon the undersigned attorneys for the Debtor at least three (3) days prior to the return date of the motion.

PLEASE TAKE FURTHER NOTICE, that a copy of the motion and supporting papers is on file in the Office of the Clerk of the Court, and may be inspected there during normal business hours.

Dated: January 8, 2012  
Rochester, New York



David H. Ealy, Esq., Of Counsel  
TREVETT CRISTO SALZER & ANDOLINA P.C.  
Attorneys for Debtors  
Office and P.O. Address:  
Two State Street, Suite 1000  
Rochester, New York 14614  
Telephone: (585) 454-2181

TO: Morris L. Horwitz, Esq.  
CHAPTER 12 TRUSTEE  
14 Lafayette Square, Suite 1440  
Buffalo, NY 14203

OFFICE OF THE U.S. TRUSTEE  
Olympic Towers  
300 Pearl Street, Suite 401  
Buffalo, NY 14202

Edward L. Gilbert  
8060 Sand Hill Road  
Rushford, NY 14777-9702

Jane M. Gilbert  
8060 Sand Hill Road  
Rushford, NY 14777-9702

USDA FARM SERVICE AGENCY  
The Galleries of Syracuse  
441 S. Salina St., Suite 351  
Syracuse, NY 13202

M&T BANK  
1100 Wehrle Drive  
Williamsville, NY 14221

VANDERMARK EXPLORATION INC.  
2 Charles Street  
Scio, NY 14880

ALL CREDITORS (Notice Only)

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

CHAPTER 12

EDWARD L. GILBERT  
JANE M. GILBERT

Debtors.

BK No. 09-10263

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**MOTION FOR ORDER AUTHORIZING SALE  
OF REAL PROPERTY, 20.3 ACRE PARCEL, SAND  
HILL AND LAKE ROADS, TOWNS OF RUSHFORD, AND  
CANADEA, COUNTY OF ALLEGANY, AND STATE OF  
NEW YORK, FREE AND CLEAR OF LIENS**

TO: HON. CARL L. BUCKI, CHIEF U.S. BANKRUPTCY JUDGE

The debtors herein, Edward L. and Jane M. Gilbert ("Debtors"), by and through their undersigned attorneys, Trevett Cristo Salzer & Andolina P.C., hereby move for an Order pursuant to 11 U.S.C. §§363(b)(1) and (f), and 1206 (the "First Sale Motion"), authorizing the Debtors to sell free and clear of liens, for a purchase price of \$40,000.00, the following real property, to wit: 20.3 acre parcel of vacant land, being part of parcels identified as Tax Map Nos.: 64.-3-18 and 64.-1-8.31, located on Sand Hill and Lake Roads, in the Towns of Rushford and Canadea, County of Allegany, and State of New York; further authorizing payment from the proceeds of sale of reasonable and necessary closing costs, including recording costs and attorneys fees; authorizing the Debtors to execute whatever documentation is necessary to effectuate said transfer and distribution of funds; and granting such other and further relief as is just and proper. In support of the First Sale Motion, the Debtors respectfully represent:

## JURISDICTION

1. This Court has jurisdiction to entertain the First Sale Motion pursuant to 28 U.S.C. §1334. Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. Consideration of the First Sale Motion is a core proceeding pursuant to 28 U.S.C. §157(b). The statutory predicates for the relief sought are 11 U.S.C. §§363(b) and (f), and 1206, and Bankruptcy Rule 6004.

## BACKGROUND

2. The Debtors filed a Petition commencing the above-captioned case under Chapter 13 of the Bankruptcy Code on January 23, 2009 ("Petition Date").

3. The Debtors own and operate a dairy farm on a 233.1 acre farmstead and 161.1 additional acres. The Debtor also earns income as an insurance agent for Allegany Cooperative Insurance.

4. The Debtors continue in possession of the Property and are presently operating their dairy farm business as a Debtor-In-Possession under Chapter 12. The appointed Chapter 12 Trustee is Morris L. Horwitz, Esq.

5. A Chapter 12 Plan was filed by the Debtors herein on October 1, 2009. The Plan was modified and confirmed by Order entered on September 22, 2010 (Docket No. 92). Pursuant to the Confirmation Order, the Debtors are required to pay the Trustee the amount of \$2,966.00 per month

on the first day of each month commencing February 1, 2010, for a term of twelve (12) months, increasing to \$5,766.00 per month for a remaining term of forty-eight (48) months.

6. The Debtors are in arrears under the terms of the confirmed Chapter 12 Plan due to a reduction in milk price and increase in farm expenses. Upon information and belief, the amount of the accumulated arrears exceed \$22,000.

#### MOTION FOR SALE OF REAL PROPERTY

7. The Debtors are the owners as tenants by the entireties of real property located on Sand Hill Road, in the Town of Rushford, County of Allegany, and State of New York, identified as Tax Map No. 64.-1-8.31, comprising 233.10 acres of land ("Parcel I"), and an adjoining parcel located on Lake Road, in the Town of Canadea, County of Allegany, and State of New York, identified as Tax Map No. 64.-3-18, comprising 7.3 acres of land ("Parcel II"). A copy of the pertinent excerpt from an Abstract of Title evidencing Debtors' interest in the aforementioned real property is annexed hereto as **Exhibit A**.

8. The Debtors have received a written offer to purchase Parcel II and part of Parcel I comprising 20.3 acres land (the "Subject Parcel"). A map depicting the Subject Parcel is annexed hereto as **Exhibit B**.

9. The offer to purchase the Subject Parcel is made by Gary Gilbert. Gary Gilbert is the cousin of the debtor Edward Gilbert. The purchase offer is for \$40,000.00, net of all expenses of sale, excluding real property taxes (hereinafter the "Gilbert Offer"). A copy of the Gilbert Offer is annexed hereto as **Exhibit C**.

10. The purchase offer price is equal to the fair market value of the Subject Parcel. The Subject Parcel is appraised to have a value of \$1,452 per acre based on a Property Value Analysis Report prepared for the USDA Farm Service Agency, dated as of March 9, 2009. The purchase price is equivalent to \$1,970 per acre. Parcel I has a land assessed value of \$1,731 per acre and Parcel II has a land assessed value of \$1,329 per acre. A copy of the aforesaid appraisal is annexed hereto as **Exhibit D**.

11. The Properties are encumbered with liens for delinquent real property taxes owing to Allegany County for tax years 2009 and 2012, including \$18,832, including school tax relevies.

12. The Properties are encumbered with a mortgage interest granted by the Debtors to Wilson L. Gilbert and Marian T. Gilbert, to secure a debt in the original amount of \$177,778.92. Said mortgage interest is evidenced by a mortgage document dated February 1, 1991, which was recorded in the Office of the Allegany County Clerk on April 1, 1991, in Liber 587 of Mortgages at Page 1.

13. The indebtedness owed by the Debtors to Wilson L. Gilbert and Marian T. Gilbert, secured by the mortgage referenced in paragraph 12 hereof, was \$164,730.68, as of the Petition Date, based on a proof of claim filed herein on February 6, 2009, a copy of which is annexed hereto as **Exhibit E**.

14. The properties are further encumbered with the following mortgages:

<u>Mortgagor</u>	<u>Dated</u>	<u>Date Recorded</u>	<u>Liber/ Page</u>	<u>Amount</u>
Manufacturers & Traders	6/30/97	7/31/97	812/242	250,000
USDA Farm Service Agency	5/23/01	5/25/01	977/196	160,000
USDA Farm Service Agency	5/23/01	5/30/01	977/322	78,600
USDA Farm Service Agency	7/18/02	7/23/02	1045/53	142,500

15. The balance of the mortgage indebtedness owed by the Debtors to USDA Farm Service Agency, secured the by mortgages listed in paragraph 14 hereof, as of the Petition Date, was \$241,964.72, based on a proof of claim filed herein on March 16, 2009, a copy of which (without exhibits) is annexed hereto as **Exhibit F**.

16. Wilson L. Gilbert is deceased. The Gilbert mortgage is now held solely by Marian E. Gilbert. Mrs. Gilbert has agreed to release her mortgage interest in the Subject Property and allow the Debtors to retain the net proceeds. The Debtors intend to utilize all of the net proceeds to pay arrears due under the terms of their Chapter 12 Plan.



17. Sale of the Subject Parcel pursuant to the Gary Gilbert Sale Contract is in the best interest of the Debtors' estate and will assist the Debtors in complying with their obligations under the Chapter 12 Plan.

#### BASIS FOR RELIEF REQUESTED

18. Pursuant to 11 U.S.C. §1206, the Trustee in a case under Chapter 12 "may sell property under §363(b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland ...", except that the proceeds of such sale shall be subject to such interest.

19. The Subject Property is farmland.

20. All of the proceeds after payment of real property taxes are subject to the mortgage interest of Marian E. Gilbert.

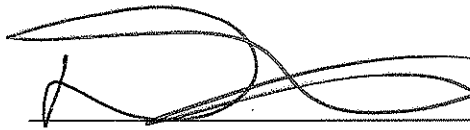
21. Pursuant to 11 U.S.C. §1206, the Debtors are authorized to sell the Subject Parcel free and clear of interests, and with the consent of the Mrs. Gilbert, may retain the proceeds of sale.

#### PRIOR REQUESTS

22. No prior request has been made for the relief requested herein.

WHEREFORE, the Debtors respectfully request that the Court grant an Order authorizing them to sell the real property identified in paragraph 7 hereof, pursuant to the Gilbert Sale Contract, free and clear of liens, pursuant to 11 U.S.C. §§1206 and 363(b); further authorizing payment of reasonable and necessary costs of sale; authorizing the Debtors to execute whatever documentation is necessary to effectuate said sale and distribution of funds; and granting such other and further relief as the Court deems just, proper and equitable.

Dated: January 8, 2013  
Rochester, New York

A handwritten signature in black ink, appearing to read 'David H. Ealy', is written over a horizontal line.

David H. Ealy, Esq., of Counsel  
TREVETT CRISTO SALZER & ANDOLINA P.C.  
Attorneys for Debtors  
Office and P.O. Address:  
Two State Street, Suite 1000  
Rochester, New York 14614  
Telephone: (585) 454-2181